



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,249	08/02/2006	David G. Lenahan	10FY-120754	6429
30764 7590 12/02/2008 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP 333 SOUTH HOPE STREET 48TH FLOOR LOS ANGELES, CA 90071-1448			EXAMINER JACKSON, DANIELLE	
			ART UNIT 3636	PAPER NUMBER
			MAIL DATE 12/02/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/588,249	Applicant(s) LENAHAN, DAVID G.	
	Examiner DANIELLE JACKSON	Art Unit 3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/16/08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the replacement drawings the Applicant claim to have submitted have not been received. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Kida (US-4,474,201).

Kida discloses a canopy comprising: a single pliable cloth cover (35) having an asymmetrical positioned vertex point (2) from which the cover projects with unequal extensions (FIG. 4), wherein at the asymmetrical positioned vertex point (the point where the support ribs meet), the canopy is rotatable around a fixed longitudinal axis (the axis being the axis of the shaft 1) relative to the

Art Unit: 3636

ground to provide an adjustable coverage zone within a desired stationary area at a time of day when rotated from a first canopy position to a second canopy position at an elevated level relative to the ground. Further regarding claim 13, Kida discloses a fixed support mechanism (1) for positioning the canopy relative to the elevated level.

Kida teaches support ribs that traverse the cover, wherein some of the support ribs have a fixed length (3) and some of the support ribs have a variable length (18) where they are adjusted by an extendible member (FIG. 1(a)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kida (US-4,474,201) alone.

Kida is discussed above but is silent on the asymmetry ratio of the unequal extensions, however it would have been obvious to one of ordinary skill in the art to modify Kida to provide a canopy with a ratio in a range between 1.5:1 and 2.3:1 measured horizontally in plan view. Every asymmetrical umbrella has a ratio of extended ribs to fixed ribs and the particular ratio would have been an

Art Unit: 3636

obvious matter of design choice within the skill of the art because the particular ratio presents no novel or unexpected result.

Claims 12, 14 and 16-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kida (US-4,474,201) as applied to claim 1 above, and further in view of Henderson (US-2,671,459).

Claims 12 and 26: Kida is discussed above but lacks the longitudinal axis being a tilted longitudinal axis. Henderson shows an umbrella having a cover (B) extending from a longitudinal axis defined by the support pole (C), wherein the longitudinal axis can be tilted (FIG. 2). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Kida to include a tilted longitudinal axis, as suggested by Henderson, so that the umbrella could provide an even wider coverage zone.

Claims 14 and 16-24: Kida discloses a canopy comprising: a single pliable cloth cover (35) having an asymmetrical positioned vertex point (2) from which the cover projects with unequal extensions (FIG. 4), wherein at the asymmetrical positioned vertex point (the point where the support ribs meet), the canopy is rotatable around a fixed longitudinal axis (the axis being the axis of the shaft 1) relative to the ground to provide an adjustable coverage zone within a desired stationary area at a time of day when rotated from a first canopy position to a second canopy position at an elevated level relative to the ground. Further

Art Unit: 3636

regarding claim 13, Kida discloses a fixed support mechanism (1) for positioning the canopy relative to the elevated level.

Kida teaches support ribs that traverse the cover, wherein some of the support ribs have a fixed length (3) and some of the support ribs have a variable length (18) where they are adjusted by an extendible member (FIG. 1(a)).

Claim 25: Kida is discussed above but is silent on the asymmetry ratio of the unequal extensions, however it would have been obvious to one of ordinary skill in the art to modify the combination of Kida and Henderson to provide a canopy with a ratio in a range between 1.5:1 and 2.3:1 measured horizontally in plan view. Every asymmetrical umbrella has a ratio of extended ribs to fixed ribs and the particular ratio would have been an obvious matter of design choice within the skill of the art because the particular ratio presents no novel or unexpected result.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kida (US-4,474,201) in view of Henderson (US-2,671,459) as applied to claim 12 above, and further in view of Ma (US-2002/0129847 A1).

The combination of Kida and Henderson is discussed above but lacks the support mechanism comprising a cantilevered support at the vertex point by a projection from above the canopy. Ma shows a canopy having a canopy (15) that is supported by a projection (16) located above the canopy that is attached to a cantilevered support (12). It would have been obvious to one of ordinary skill

in the art at the time the invention was made to modify the combination of Kida and Henderson to include a cantilevered support mechanism that attaches to a point above the canopy, as suggested by Ma, so there will not be an undesired support mechanism under the canopy.

Response to Arguments

Applicant's arguments filed 7/17/08 have been fully considered but they are not persuasive.

In response to applicant's arguments, the recitation "a stationary covering" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). Additionally, "for a stationary canopy" is considered functional language and given little patentable weight. Finally, it is noted that if Kida was held stationary, it would be considered a stationary umbrella.

Applicant further argues that the umbrella shown in Kids is not asymmetrical, however the examiner would like to specifically point out FIG. 4 of Kida as evidence that the umbrella canopy is indeed asymmetrical and the vertex point is not located in the

Art Unit: 3636

center of the canopy. Examiner also notes that FIG. 4 of Kida shows a strong resemblance to FIG. 4 of the present application.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIELLE JACKSON whose telephone number is (571)272-2268. The examiner can normally be reached on Monday through Friday 8:30AM - 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Dunn can be reached on (571) 272-6670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3636

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. J./
Examiner, Art Unit 3636

/DAVID DUNN/
Supervisory Patent Examiner, Art Unit 3636